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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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ENERGIZER S.A., : Docket No. 07 cv 7406 (LTS)

Plaintiff, :

**- Against -** :

M/V YM GREEN her engines, boilers and :  
tackle *in rem*; YANG MING MARINE :  
TRANSPORT CORP.; YANGMING (UK) LTD.; :  
ALL OCEANS TRANSPORTATION INC.; :  
KAWASAKI KISEN KAISHA LTD.; CONTERM :  
HONG KONG LTD.; VANGUARD LOGISTICS :  
SERVICES HONG KONG LTD.; :  
FIEGE GOTH CO., LTD.; and SHENZHEN HIGH :  
POWER TECHNOLOGY CO. LTD. :

Defendants. :

**ENERGIZER S.A.'S**  
**REPLY TO COUNTERCLAIM**  
**OF DEFENDANT KAWASAKI**  
**KISEN KAISHA LTD.**

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The Plaintiff, Energizer S.A., by and through its attorneys Hill Rivkins & Hayden  
LLP, as and for its reply to the counterclaim asserted by KAWASAKI KISEN KAISHA LTD. ("K-

Line”) alleges upon information and belief as follows:

1. Paragraph 36 of the counterclaim is one to which no response is required.
2. Plaintiff denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37 of the Counterclaim.
3. Plaintiff admits the allegations set forth in Paragraph 38 of the Counterclaim.
4. Plaintiff denies the allegations set forth in Paragraph 39 of the Counterclaim.
5. Plaintiff denies the allegations set forth in Paragraph 4039 of the Counterclaim.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

6. The counterclaim fails to state a claim upon which relief maybe granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

7. If Defendant K-Line sustained any damage, which is denied, said damages were caused in whole or in part by Defendant’s own acts of negligence and were not caused or contributed to in any manner by the fault, negligence, want of care, lack of due diligence, or breach of any warranty on the part of plaintiff.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

8. If Defendant K-Line sustained any damages, which is denied, said damage were caused solely by the acts or omissions of third parties for which Plaintiff is not responsible and over which Plaintiff had no control and were not caused or contributed to in any manner by the fault, negligence, want of care, lack of due diligence, or breach of any warranty on the part of Plaintiff.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

9. Defendant K-Line has failed to properly mitigate their damages.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

10. If Plaintiff is found negligent, which is denied, any such negligence was superseded by the negligence and or other wrongful acts of Defendant K-Line and/or third parties over whom plaintiff had no control and for which plaintiff is not responsible.

**CLAIM FOR INDEMNITY AND CONTRIBUTION FROM  
DEFENDANTS M/V YM GREEN, ALL OCEANS TRANSPORTATION, INC.,  
SHENZHEN HIGH POWER, CONTERM HONG KONG LTD., VANGUARD  
LOGISTICS SERVICES HONG KONG LTD., FIEGE GOTH CO. LTD.,  
YANG MING MARINE TRANSPORT CORP. and YANGMING U.K. LTD.**

11. Plaintiff repeats and realleges every defense, admission, denial and denial of information and belief set forth in paragraphs 1 through 10 as if set forth herein at length.

12. Defendant K-Line claims to have sustained losses as a result of the fire that took place on board the M/V YM GREEN including hold no. 4 of the said vessel and intend to hold Energizer liable for any and all losses they have sustained, all of which Energizer has expressly denied.

13. To the extent Plaintiff Energizer is held liable or becomes liable to pay for the losses of Defendant K-Line, all of which is expressly denied, said losses were caused directly and proximately, in whole or in part, by defendants M/V YM GREEN, ALL OCEANS TRANSPORTATION, INC., SHENZHEN HIGH POWER TECHNOLOGY CO., LTD., CONTERM HONG KONG LTD., VANGUARD LOGISTICS SERVICES HONG KONG LTD.,

FIEGE GOTH CO. LTD., YANG MING MARINE TRANSPORT CORP. and YANGMING U.K. LTD. reckless, negligent and improper manufacture, loading, stowing, handling, carriage, keeping and caring for, transshipment, and/or consolidation of plaintiff's cargo with other cargoes, all of which were committed with knowledge that damage would probably result.


**WHEREFORE**, Plaintiff prays:

1. That the counterclaim asserted by KAWASAKI KISEN KAISHA LTD. be dismissed with prejudice together with costs, disbursements and attorneys' fees.
2. That judgment be entered against defendants M/V YM GREEN, ALL OCEANS TRANSPORTATION, INC., SHENZHEN HIGH POWER TECHNOLOGY CO., LTD., CONTERM HONG KONG LTD., VANGUARD LOGISTICS SERVICES HONG KONG LTD., FIEGE GOTH CO. LTD. YANG MING MARINE TRANSPORT CORP. and YANGMING U.K. LTD. on plaintiff's claim for indemnity and contribution.
3. Plaintiff further prays for such other, further and different relief as to this Court may deem just and proper in the premises.

Dated: New York, New York  
January 28, 2008

Respectfully submitted,

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